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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION ONE

C.A.,

Petitioner,

v.

THE SUPERIOR COURT OF CONTRA  
COSTA COUNTY,

Respondent;

CONTRA COSTA COUNTY CHILDREN  
AND FAMILY SERVICES BUREAU,

Real Party in Interest.

A149280

(Contra Costa County  
Super. Ct. No. J15-00612)

C.A. (Mother), the mother of M.R. (minor), has filed an extraordinary writ petition challenging the termination of her reunification services and setting a hearing pursuant to Welfare and Institutions Code<sup>1</sup> section 366.26. On appeal, she maintains she was not provided adequate reunification services, and the juvenile court erred in finding return of the minor to her custody would be detrimental. We conclude both contentions lack merit and deny the petition.

**I. BACKGROUND**

The minor, the daughter of Mother and her boyfriend (Father), was detained several days after her birth because Mother tested positive for methamphetamine use during the latter stages of the pregnancy. A juvenile dependency petition under

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

section 300, subdivision (b) was filed with respect to the minor on May 29, 2015.

Mother later pleaded no contest to petition allegations that she “has untreated mental health issues,” failed to obtain proper prenatal care, tested positive for methamphetamine use more than once during the pregnancy, and suffered a termination of her parental rights with respect to an earlier child. The minor was found to be a dependent of the court and placed in foster care.

As explained in the jurisdictional and dispositional reports, Mother came to the Contra Costa County Children and Family Services Bureau’s (Agency) attention after she required treatment for an antibiotic-resistant staph infection and “chronic abscesses” shortly before the minor’s birth. At the time, she tested positive for methamphetamine use three times in less than a month, and she admitted to the Agency that she had been using methamphetamine almost daily for the past 10 years.

Mother had a difficult childhood, raised by a resentful mother and subjected to physical and sexual violence while a teenager. She told the Agency she began using methamphetamine recreationally in 1992 and later became a daily user. A prior child of Mother, now a teenager, was removed from her custody in 2006 as a result of domestic violence with her then-boyfriend, and Mother failed to reunify with the child as a result of her drug use.

In addition to her drug use, Mother had been diagnosed with depression, anxiety disorder, agoraphobia, and insomnia, and she is diabetic. Early in the proceedings, she was seeing a psychiatrist and was taking medication for “anxiety, sleep and depression,” as well as medications for her physical infirmities.

The record contains virtually no information about Father. He and Mother had been in a dating relationship for four years, but they had never lived together. At the time the proceeding was commenced, Father lived with his parents and claimed to have been unaware of Mother’s drug use. Approximately two weeks after the minor’s birth, Father went to the hospital to visit the minor. During this visit, he complained about the minor’s care, became “confrontational,” and was asked to leave the hospital. After the Agency contacted Father and requested that he not attempt to visit the minor until she was

released from the hospital, Father ceased any contact with the Agency, and his visitation rights were eventually suspended. Other than the hospital incident and a 1996 arrest for possession of drug paraphernalia, however, the record contains no information about Father. The Agency's reports voiced suspicion of domestic violence between Mother and Father, but the record contains no evidence of such conduct.

The Agency formulated a reunification plan calling for completion of a mental health assessment, individual psychological counseling, an inpatient substance abuse treatment program, participation in a 12-step program, and a parenting education class. Soon after the minor's birth, Mother entered the inpatient drug treatment program. Initially, she was allowed twice-monthly visits with the minor. Mother received psychological therapy throughout the reunification period, but it appears the mental health assessment never occurred.

In late October 2015, about five months into the proceeding, Mother filed a motion to modify the court's visitation order to permit unsupervised and overnight visits with the minor. In support of the motion, Mother demonstrated she had completed a 120-day stay at the inpatient drug treatment program and had consistently tested free of drugs.<sup>2</sup> At the time, her psychotherapist confirmed she suffered from anxiety and depression as a result of posttraumatic stress disorder but noted she was a "strongly motivated participant in her psychotherapy, demonstrating continued dedication to her recovery processes."

The Agency asked to defer the issue of visitation until the six-month review hearing, to be held in January 2016. It was concerned that after completing the treatment program, Mother returned to her home where she previously used "substances," and resumed her relationship with Father who had not cooperated with the Agency and was not involved in his case plan. The Agency believed Mother should be required to demonstrate a minimum of six months of sobriety prior to beginning unsupervised visits

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<sup>2</sup> The drug treatment program normally ended after 90 days, but Mother had asked to extend her stay because she was depressed and anxious and lacked confidence to live a changed life without drug use.

and feared she would allow Father to have contact with the minor if her visits were unsupervised. The juvenile court granted the Agency's request to defer.

In a report submitted for the six-month hearing, the Agency said that Mother continued to participate in substance abuse group treatment, and had completed one parenting course and was attending another. She consistently tested negative for street drugs, but the drug tests detected benzodiazepines. Mother's weekly visits with the minor were going well, with Mother demonstrating "appropriate affection" and an ability to soothe the minor. Nonetheless, the Agency was concerned that Mother's failure to develop a new support network and her continued relationship with Father placed her at risk of a relapse into drug use. Further, although the Agency supported expanded visitation, it found her home cluttered and dirty, unsuitable for visitation by an infant. When a social worker met with Mother in November to explain the Agency would require Mother to maintain sobriety for an extended period before consenting to unsupervised visits, Mother began to cry and said she felt overwhelmed and found it difficult to complete the tasks required by the reunification plan. The same thing happened during a similar meeting in December, three weeks later.

At the six-month hearing, the juvenile court scheduled a contested hearing for February 2016, later continued to early March. At that hearing, the juvenile court authorized the Agency to grant unsupervised visitation, and Mother withdrew the section 388 motion. Father's reunification services were terminated, but Mother's were extended for an additional six months.

In the report prepared for the 12-month review hearing, filed August 19, 2016, the Agency recommended termination of reunification services to Mother and scheduling of a permanency planning hearing under section 366.26. The Agency acknowledged that Mother had "complied with all of the components of her case plan," had successfully completed substance abuse treatment, submitted to random drug testing, participated in individual therapy, attended visits regularly, had "stable housing and financial resources to meet her needs," and was "beginning to develop a group of supportive friends." She continued to test negative for consumption of street drugs, although the drug tests

inconsistently detected benzodiazepines and oxazepam. When questioned, Mother explained she was taking eight prescribed medications, including gabapentin, Brintellix, trazodone, and Temazepam.<sup>3</sup> When told about the test results, Mother's treating psychiatrist found no reason to conclude that she was misusing her medication. Mother was consistently attending psychological therapy sessions, but she continued to suffer from symptoms of depression.

Beginning in March 2016, Mother had started a "process to transition to unsupervised visitation" with the minor, but the report does not explain whether or to what extent unsupervised visitation was actually permitted. From March to August 2016, Mother's visits had been supervised by an entity called Ujima Central, which also provided parenting education. Ujima Central staff "reported that the visits were going well and did not have any concerns regarding [Mother's] parenting ability."

A social worker, however, "shadowed" Mother during a four-hour visit in June 2016, and found Mother's behavior deficient in three ways. First, she had difficulty consoling the minor, who cried excessively. Because Mother wanted to attend a scheduled a therapy session, she gave the minor a cup, placed her in a stroller, and said, " 'you need to take of this [*sic*] because I have things to do,' " which the social worker found "disturbing" due to the minor's age of 12 months. Second, Mother did not provide for a normal meal, but instead fed the minor a snack while sitting at a bus stop. Finally, each time the minor became exhausted from crying and attempted to sleep, Mother woke her by applying sunscreen or changing her diaper, preventing a normal nap. As the report explained, "[the minor] is an infant who has a fussy temperament. As a result she is dependent on her caregiver. During the supervised visit [in June], it did not appear that [Mother] is aware of child development. [Mother] did not inquire about her daughter's daily habits or scheduling to provide continuity in care. In addition, [Mother's] needs overshadowed the basic needs of her daughter. [Mother] was determined to attend her

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<sup>3</sup> There was no evidence in the record regarding the purpose or effects of these medications.

appointment that [*sic*] she was unable to allow her daughter time to nap or eat. This concerns the department and inhibits the social worker from permitting [Mother] to have unsupervised contact with her daughter. While [the minor] is fussy in nature it is important that the caregiver is able to provide consistent structure to minimize her distress. It is unclear whether [Mother] can provide this level of care consistently.”

Mother reported speaking with Father on the telephone twice a week and “expresse[d] ambivalence about whether [Father] should be permitted to have contact with [the minor].” This concerned the Agency because “[i]t is uncertain whether he is maintaining a sober free lifestyle [*sic*] or the dynamics in the relationship.” Noting Mother is “emotionally connected” to Father, the Agency indicated it was unfortunate Father did not “engage with the department” so an assessment could be completed. The Agency also noted it had been reported Father had engaged in inappropriate behavior, raising concerns Mother and Father “may have engaged in domestic violence and substance abuse.”

Although the Agency commended Mother for her efforts, it recommended termination of reunification services, based on Mother’s conduct during the single visit observed by the Agency and her continued relationship with Father.

At the 12-month review hearing, Mother’s attorney requested an additional six months of reunification services for Mother because she had successfully complied with her case plan up until that time and was making progress in acquiring parenting skills.

Prior to ruling, the court told the parties it understood “that the child cries all of the time when she’s with the mother. . . . , but she does not cry at other times like when she goes to the doctor or has other visits.” In response, a social worker was called to testify. The social worker said the minor’s foster parents told her “that every time [the minor] goes to visit with her mother that she typically cries” when presented to Mother, but the minor is ordinarily asleep when they pick her up from visits. The social worker had no information about the minor’s crying at other times, such as during doctor’s appointments, or how long the minor’s crying lasted with Mother. The social worker did

say, however, that a new foster family who had recently taken over the minor's care reported no unusual crying by the minor.

Thereafter, the juvenile court terminated reunification services, finding that it was not likely Mother would be able to reunify if granted the additional time. As the court explained: "We have given 16 months of service by the Court to this mother.<sup>[4]</sup> I think we have given everything we possibly could. I do think she's tried. . . . I think she's very attached to [Father] who absolutely refuses to have anything to do with court, and I'm concerned about that, because I think there was some indication of domestic violence and other issues.

"This is not [Mother's] first go-around with reunification services. She's also had a previous child she had reunification services with. So she's very, very familiar with the procedures and reunification. She's had months and months of parenting classes. As far as I can see, she's had[,] almost steadily[,] parenting classes, parenting help, parenting support.

"I'm concerned about her drugs. I'm concerned about someone taking a strong sleeping medication as often as she takes it steadily. I'm concerned that somebody under that kind of sleeping medication would not be awake to hear their child should something come up, the steadiness of which she takes it.

"I'm concerned about the trazodone that [Mother] is on, which is also a very, very strong drug. I'm concerned about her need for these drugs to keep her mentally stable and to keep her focused and to keep her not depressed. I'm concerned about that. But the thing I'm most concerned about is that [Mother] seems to have no sense on taking care of a child. I think she just doesn't have it.

"I have to look at this stage at the best interest of the child. Her lack of cues, her lack of understanding the cues and the needs of the child, and frankly, the child's reaction to the mother substantiates that the child gets it. The child knows this is not right.

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<sup>4</sup> The court overestimated the duration of services. The dependency petition was filed less than 15 months prior to the hearing.

“I know it’s bizarre to think this. When I think how long [Mother] has had visits, and the fact that she’s still crying when she still sees her and crying almost every time is just a very bad sign. So I can’t find a substantial probability that if I gave it to the 18 months that the child could be returned. I simply cannot because I don’t think the child would be safe.

“Again, I think [Mother] has done to the best of her ability, but I do think [Father] is right around the corner. The minute we get out of this case, [Father] is coming right back, at least [Mother] hopes he does, because I think she’s very attached to [Father].

“For a million reasons, all of those that I’ve stated, I really cannot make a finding of substantial probability, and I really don’t have anything other than the best interests of the child. I’m going to have to follow the recommendations, I’m terminating the services to [Mother].”

## **II. DISCUSSION**

Mother contends (1) she was not provided reasonable reunification services because the Agency did not perform a mental health assessment and (2) the juvenile court’s finding that it would be detrimental to return the minor to Mother’s custody was based on speculation and conjecture and was not supported by substantial evidence.

### ***A. Reunification Services***

The purpose of reunification services is to place the parent in a position to gain custody of the child. (*In re Karla C.* (2010) 186 Cal.App.4th 1236, 1244.) The law governing the provision of reunification services was summarized in *Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415: “Family reunification services play a critical role in dependency proceedings. [Citations.] Reunification services should be tailored to the particular needs of the family. [Citation.] . . . [¶] The ‘adequacy of reunification plans and the reasonableness of the [Agency’s] efforts are judged according to the circumstances of each case.’ [Citation.] To support a finding reasonable services were offered or provided, ‘the record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service



plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult . . . .’ [Citation.] ‘The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.’ ” (*Id.* at pp. 1425–1426.) We review the juvenile court’s finding of reasonableness under the substantial evidence test. (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1346.)

In light of the allegations of the petition, the Agency adopted a reunification plan directed at substance abuse treatment, psychological counseling, and parenting skills. Almost immediately upon the minor’s detention, Mother entered an inpatient drug treatment program. There she was provided individual psychotherapy in addition to other substance abuse treatment. Because Mother did not feel psychologically prepared to leave the program at the end of the standard 90 days, she was permitted to stay for an additional month. Once she left the program, she was enrolled in two sequential parenting classes. In addition, her visitation was supervised by an institution that also provided counseling in parenting techniques. Throughout the reunification period, Mother was under the care of a psychiatrist, who provided her with medication to cope with her psychiatric symptoms. This range of reunification services, which directly addressed the concerns raised by the dependency petition and the circumstances that led to the minor’s detention, provides substantial evidence to support the conclusion that the Agency identified the problems leading to the minor’s detention and made available a reasonable range of services targeted to address those problems.

In contending reunification services were not adequate, Mother focuses on a single aspect of the proposed reunification program, the failure to perform a general mental health assessment. The purpose of such an assessment, of course, is to guide the Agency in seeking, if necessary, appropriate mental health care for the parent. Mother had already been diagnosed with various mental health problems before the proceeding began. She began counseling and psychiatric treatment almost immediately. Although it is possible a mental health assessment might have uncovered other or different maladies or given more guidance to the therapists, we cannot conclude the failure to perform such

an assessment rendered the reunification services inadequate, given the continuous mental health services provided Mother.

In arguing the insufficiency of services, Mother relies on *Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397. In that case, the child’s detention grew directly from conduct attributable to the mother’s mental illness, but there was no evidence in the record the agency ever obtained a clear diagnosis of her illness. (*Id.* at pp. 422–424.) Here, Mother’s mental health was not the cause of the events leading to the minor’s detention, and there does not appear to be any dispute as to her diagnosis of depression. The failure to perform a mental health assessment is therefore of less significance to the overall adequacy of reunification services.

### **B. Finding of Detriment**

Mother contends the juvenile court’s finding that return of the minor to her custody would be detrimental to the minor’s well-being was not supported by substantial evidence. Although the juvenile court made no actual finding of detriment at the 12-month review hearing, it adopted the Agency’s recommendations, which included such a finding.<sup>5</sup>

“The juvenile court must review the case at least once every six months. [Citation.] At the dispositional hearing, and at each review hearing prior to permanency planning, there is a statutory presumption that the child will be returned to parental custody. . . . At 6-, 12-, and 18-month review hearings the juvenile court must return the child to the custody of the parent unless it determines, by a preponderance of the evidence, that return of the child would create a substantial risk of detriment to the child’s physical or emotional well-being. (§§ 361, subd. (b), 366.21, subds. (e) & (f), 366.22, subd. (a).)” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 308.) This “critical” finding of

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<sup>5</sup> Review of the juvenile court’s conclusion is made somewhat more difficult by its failure to comply with its statutory obligation to specify the factual basis for a detriment finding. (§ 366.21, subd. (e)(2).) Although the court explained its decision not to extend reunification services, it did not mention the issue of detriment, or the factual basis for its decision to adopt the Agency’s recommended finding of detriment.

detriment is of constitutional significance. (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1235, 1238.) In *Santosky v. Kramer* (1982) 455 U.S. 745, the Supreme Court held that parental rights cannot be terminated in the absence of clear and convincing evidence of parental inadequacy. (*Id.* at p. 769.) In California’s dependency system, a finding of detriment at the review hearing held prior to a section 366.26 hearing has been held to serve this essential constitutional role, notwithstanding the lesser standard of proof. (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 749.) The burden of demonstrating detriment lies with the social services agency. (*Ibid.*)

The detriment standard, “while vaguely worded to be sure, must be construed as a fairly high one. It cannot mean merely that the parent in question is less than ideal, did not benefit from the reunification services as much as we might have hoped, or seems less capable than an available foster parent or other family member. [¶] We do not get ideal parents in the dependency system. . . . [¶] The parents who come through the dependency system are more in need of help than most. If we are lucky, they are parents who can learn to overcome the problems which landed their children in the system, and who can demonstrate the dedication and ability to provide for their children’s needs in an appropriate manner. . . . [¶] . . . We are looking for passing grades here, not straight A’s.” (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 789–790.)

We review the juvenile court’s finding of detriment for substantial evidence. (*Tracy J. v. Superior Court, supra*, 202 Cal.App.4th at p. 1424.) “ ‘Substantial evidence’ is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value. [Citation.] ‘Substantial evidence . . . is not synonymous with “any” evidence.’ Instead, it is ‘ “ ‘substantial’ proof of the essentials which the law requires.” ’ ” (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.)

The Agency contends Mother waived this issue by failing to raise it before the juvenile court. The contention that a required finding is not supported by substantial evidence, however, is not waived by the failure to raise it in the juvenile court. (*In re P.C.* (2006) 137 Cal.App.4th 279, 287–288 [“The general principle of forfeiture prohibits parties from addressing on appeal issues not raised at trial. However, the argument that a

judgment is not supported by substantial evidence is an ‘obvious exception to the rule.’ ”].)

Here, we find substantial evidence supports the juvenile court’s finding. As the court noted in denying additional reunification services, the Agency concluded Mother lacked the parenting skills necessary to care for the minor. The Agency, for example, was concerned Mother was not aware of child development because she did not inquire about the minor’s daily habits, and her needs overshadowed the basic needs of her child. Further, the juvenile court was rightly concerned that the effects of the multiple medications prescribed for Mother made the task of caring for the minor more difficult. The Agency also found Mother’s home was not appropriate for an infant, and it was worried Mother might resume a relationship with Father, who had declined to participate in the proceedings. All of these factors, considered together, constitute substantial evidence to support a finding that return of the minor to Mother posed a threat to the child’s well-being.

Mother argues the juvenile court’s conclusion that the minor’s crying signaled discomfort with Mother’s parenting is based on “speculation and conjecture” because it was contradicted by Ujima Central’s findings and was limited to the period of transition when the minor was transferred to Mother by the foster parents. We agree the evidence of the minor’s crying was of limited use in determining detriment and do not consider it in affirming the juvenile court’s finding. As noted above, however, there was substantial additional evidence to support the finding.

Mother also argues a finding of detriment is inappropriate because, as the Agency conceded, she complied with all of the terms of the reunification plan. A parent’s compliance with the terms of a reunification plan, however, does not preclude a finding of detriment. (*Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1341.)

Finally, Mother contends the Agency’s conclusion that the minor “is dependent on her caregiver” because she has a “fussy temperament” did not constitute good grounds for finding detriment and was contradicted by the evidence from the successful visits supervised by Ujima Central. While we agree a baby’s fussiness does not necessarily

make it more dependent upon the caregiver than any other one year old, the social worker provided a full explanation of her observations and the basis for her conclusion that Mother was unable properly to care for the minor. This provided substantial evidence to support the juvenile court's finding, even if contradicted by other evidence in the record. (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

### **III. DISPOSITION**

Mother's petition for an extraordinary writ is denied on the merits. (See *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) The decision is final in this court immediately. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).)

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Margulies, Acting P.J.

We concur:

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Dondero, J.

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Banke, J.

A149280  
*C.A. v. Superior Court*